

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA

v.

CR. No. _____

O'BRIAN CLEARY SMITH

26 U.S.C. §5861(d)

18 U.S.C. §1001(a)(2)

INDICTMENT

THE GRAND JURY CHARGES THAT:

At all times material herein:

O'BRIAN CLEARY SMITH was a medical doctor and the Medical Examiner for Shelby County, Tennessee. It was part of his duties as Medical Examiner to conduct autopsies on people who died and to render an opinion as to the cause of death.

The office of the Shelby County Medical Examiner was located at the Regional Forensic Center, 1060 Madison Avenue, Memphis, Tennessee.

COUNT 1

A. On Thursday, January 25, 2001, O'BRIAN CLEARY SMITH testified at a clemency hearing before the Tennessee Division of Probation and Parole. The Division of Probation and Parole was reviewing the death sentence imposed on Philip Workman for the murder of a Memphis policeman in 1981. Workman's attorneys claimed that Workman should not be executed because

the autopsy performed by the former Shelby County Medical Examiner was flawed. O'BRIAN CLEARY SMITH testified at that proceeding that the autopsy opinion of the previous Medical Examiner was correct.

B. On Friday, March 30, 2001, an attorney for Workman appeared on a Memphis radio talk show and criticized the testimony of O'BRIAN CLEARY SMITH in the clemency hearing held on January 25, 2001.

C. In early April 2001, anonymous letters were sent to a reporter for the Commercial Appeal, the District Attorney General for Shelby County and the attorney for Workman, who had appeared on the radio show. The letters, which referred to the recent appearance of the attorney on the radio talk show, stated that the writer's task was "to fight against the doctor-killer abortionists" and "to destroy the liar", O'BRIAN CLEARY SMITH.

D. On Friday, April 6, 2001, O'BRIAN CLEARY SMITH was commissioned a special deputy with the Shelby County Sheriff's office in order to carry a weapon for personal protection.

E. Approximately eleven months later, on Wednesday, March 13, 2002, two Molotov Cocktail devices and an improvised explosive device were found in an exterior west stairwell at the Shelby County Regional Forensic Center in Memphis,

Tennessee by a person collecting the trash. O'BRIAN CLEARY SMITH worked at the Regional Forensic Center and took pictures of the explosives that day.

F. On Saturday, June 1, 2002, O'BRIAN CLEARY SMITH went to work at the Regional Forensic Center that afternoon, left sometime that evening, and then returned about 9:00 P.M. to the Regional Forensic Center and notified the only employee on duty that he had returned.

G. On Saturday, June 1, 2002, at approximately 11:30 P.M., an officer with the University of Tennessee police department, while on routine patrol, stopped by the exterior west stairwell of the Regional Forensic Center to check on SMITH's truck, which was parked adjacent to the stairwell. The officer got out of his patrol car, walked around SMITH's truck staying at the scene about ten minutes. Finding nothing suspicious, the officer left the location and continued his patrol.

H. On Sunday, June 2, 2002, at approximately 12:29 A.M., a Lieutenant with the University of Tennessee police department, while driving around the building, observed keys in the driveway, stopped his patrol unit and discovered O'BRIAN CLEARY SMITH in an exterior west stairwell at the Regional Forensic Center. SMITH, who was wrapped in barbed

wire with a bomb around his neck, was locked to the exterior security bars of the window.

I. The bomb squad unit of the Memphis Police Department was called to the Regional Forensic Center, removed the bomb from around the neck of O'BRIAN CLEARY SMITH and rendered it safe by disrupting it with a water blast. SMITH was taken to the emergency room by ambulance, released a few hours later from the hospital and reported back to work later that morning.

The Charge

J. On or about June 1, 2002, in the Western District of Tennessee,

O'BRIAN CLEARY SMITH,

the defendant, knowingly possessed a destructive device, that is, a bomb, which was not registered to him in the National Firearms Registration and Transfer Record, in violation of Title 26, United States Code, Section 5841, 5861(d), and 5871.

[nmt 5 years;\$250,000 fine; or both, plus nmt 3 years of supervised release, together with a special mandatory special assessment of \$100, see 18 U.S.C. §3013(a)]

COUNT 2

A. As a result of O'BRIAN CLEARY SMITH being found wrapped in barbed wire with a bomb around his neck on June 2,

2002, an investigation was initiated by Special Agents of the Bureau of Alcohol, Tobacco, Firearms and Explosives.

B. As part of the investigation, the agents met with O'BRIAN CLEARY SMITH in order to get his statement about the events of June 1 and 2, 2002, leading up to the discovery of SMITH wrapped in barbed wire with a bomb around his neck.

C. On or about July 26, 2002, in the Western District of Tennessee, in a matter within the jurisdiction of a department and agency of the United States,

O'BRIAN CLEARY SMITH,
the defendant, knowingly and willfully made a false, fraudulent, and fictitious material statement and representation, that is, the defendant stated to agents of the Bureau of Alcohol, Tobacco, Firearms and Explosives that a person attacked him shortly after 10:00 P.M. on June 1, 2002, wrapped him in barbed wire, and placed a bomb around his neck, when in fact, that statement was false and the defendant knew it to be false.

All in violation of Title 18, United States Code, Section 1001(a)(2).

[nmt 5 years;\$250,000 fine; or both, plus nmt 3 years of supervised release, together with a special mandatory special assessment of \$100, see 18 U.S.C. §3013(a)]

COUNT 3

A. The investigation of the events surrounding the discovery of O'BRIAN CLEARY SMITH wrapped in barbed wire with a bomb around his neck on June 2, 2002 continued and the Bureau of Alcohol, Tobacco, Firearms and Explosives agents met with O'BRIAN CLEARY SMITH on September 11, 2003 to get another statement from him of the incident of June 1 and 2, 2002.

B. On or about September 11, 2003, in the Western District of Tennessee, in a matter within the jurisdiction of a department and agency of the United States,

O'BRIAN CLEARY SMITH,
the defendant, knowingly and willfully made a false, fraudulent, and fictitious material statement and representation, that is, the defendant stated to agents of the Bureau of Alcohol, Tobacco, Firearms and Explosives that a person attacked him shortly after 10:00 P.M. on June 1, 2002, wrapped him in barbed wire, and placed a bomb around his neck, when in fact, that statement was false and the defendant knew it to be false.

All in violation of Title 18, United States Code, Section 1001(a)(2).

[nmt 5 years;\$250,000 fine; or both, plus nmt 3 years of supervised release, together with a special mandatory special assessment of \$100, see 18 U.S.C. §3013(a)]

A TRUE BILL.

FOREMAN

H. E. (BUD) CUMMINS
United States Attorney
By Special Appointment

PATRICK HARRIS
Assistant United States Attorney
P. O. Box 1229
Little Rock, Arkansas 72203
501-340-2600
Arkansas Bar No. 85069